

Jul 05, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WILLIAM MARTIN CAROTHERS,
Petitioner,

v.

STATE OF WASHINGTON,
Respondent.

4:19-cv-5089-SAB

**ORDER SUMMARILY
DISMISSING HABEAS
PETITION**

Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. The \$5.00 filing fee has been paid.

PROPER RESPONDENT

An initial defect with the Petition is that it fails to name a proper party as a respondent. The proper respondent in a federal petition seeking habeas corpus relief is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the petitioner is incarcerated, the proper respondent is generally the warden of the institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d

1 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of
2 personal jurisdiction. *See Stanley*, 21 F.3d at 360.

3 Petitioner acknowledges his error and submitted a Motion to Substitute
4 Respondent, ECF No. 4. Based on the disposition of this action, however, the Motion
5 will be denied as moot.
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7 **EXHAUSTION REQUIREMENT**

8 Petitioner challenges his 2018 Benton County guilty plea to child molestation.
9 He was sentenced to 11 years' incarceration. Petitioner indicates that he did not
10 appeal from the judgment of conviction. ECF No. 1 at 2.

11 In his grounds for relief, Petitioner argues that the State of Washington has no
12 jurisdiction to decide federal constitutional matters. ECF No. 1 at 5-12. It has long
13 been settled that state courts are competent to decide questions arising under the U.S.
14 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) ("It is the duty of the
15 state court, as much as it is that of the federal courts, when the question of the validity
16 of a state statute is necessarily involved, as being in alleged violation of any
17 provision of the federal constitution, to decide that question, and to hold the law void
18 if it violate that instrument."); *see also Worldwide Church of God v. McNair*, 805
19 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal
20 courts to decide federal constitutional matters). Therefore, Petitioner's arguments
21 to the contrary lack merit.

22 Additionally, before a federal court may grant habeas relief to a state prisoner,
23 the prisoner must exhaust the state court remedies available to him. 28 U.S.C. §
24 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that
25 a prisoner give the state courts an opportunity to act on his claims before he presents
26 those claims to a federal court. *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). A
27 petitioner has not exhausted a claim for relief so long as the petitioner has a right
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1 under state law to raise the claim by available procedure. *See Id.*; 28 U.S.C. §
2 2254(c).

3 To meet the exhaustion requirement, the petitioner must have “fairly
4 present[ed] his claim in each appropriate state court (including a state supreme court
5 with powers of discretionary review), thereby alerting that court to the federal nature
6 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,
7 365–66 (1995). A petitioner fairly presents a claim to the state court by describing
8 the factual or legal bases for that claim and by alerting the state court “to the fact
9 that the ... [petitioner is] asserting claims under the United States Constitution.”
10 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th
11 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim
12 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–366.

13 Furthermore, to fairly present a claim, the petitioner “must give the state
14 courts one full opportunity to resolve any constitutional issues by invoking one
15 complete round of the State's established appellate review process.” *O'Sullivan*,
16 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,
17 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275
18 (1971). It appears from the face of the Petition, the attached documents, letter
19 received on May 23, 2019, that Petitioner has not exhausted his state court remedies
20 as to each of his grounds for relief. Indeed, Petitioner affirmatively represents that
21 he did not exhaust his state court remedies.

22 **GROUND FOR FEDERAL HABEAS RELIEF**

23 Petitioner asserts that the Washington state constitution contradicts the federal
24 constitution regarding the Fifth Amendment right to “presentment or indictment of
25 a Grand Jury.” He claims “no bill of indictment” was brought against him rendering
26 his arrest, conviction and imprisonment illegal.

27 Petitioner seems to argue that because the state courts have defied “federally
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1 established procedures and processes for the adjudication of crimes” only “a court
2 of federal jurisdiction” has jurisdictional authority over his claims. His bald
3 assertion that “due process of the law was ignored” is unsupported by his factual
4 allegations.

5 The United States Supreme Court stated long ago: “Prosecution by
6 information instead of by indictment is provided for by the laws of Washington.
7 This is not a violation of the Federal Constitution.” *See Gaines v. State of*
8 *Washington*, 277 U.S. 81, 86 (1928). Consequently, Petitioner’s assertions to the
9 contrary presented in his four grounds for federal habeas relief are legally frivolous.

10 Because it plainly appears from the petition and accompanying documents
11 that Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition,
12 ECF No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254 Cases
13 in the United States District Courts. All pending motions are **DENIED as moot**.

14 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,
15 enter judgment, provide copies to Petitioner, and close the file. The Court certifies
16 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be
17 taken in good faith, and there is no basis upon which to issue a certificate of
18 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
19 appealability is therefore **DENIED**.

20 **DATED** this 5th day of July 2019.

A handwritten signature in blue ink, reading "Stanley A. Bastian".

Stanley A. Bastian
United States District Judge